

REMARKS

Both the Applicant and the Examiner agree on the issue presented by the application of the Lesh reference to the claims presented. At issue is whether or not the pore size disclosure of Lesh supports an argument that the Lesh invention inherently discloses the applicant's invention and is therefore an anticipation of the invention and rejectable under §102. A closely associated view is that although there is no discussion in Lesh of fluid transport through the membrane the pore size combined with other knowledge would lead one of ordinary skill in the art to conclude that the claimed invention would solve an articulated problem.

In Applicant's view the best way to visualize a structure of Lesh is that it consists of many porous layers laminated together so that the pores overlap enough times and enough directions so that there is in fact no fluid path from one side of the membrane to the other. In other words, the pores form small craters on the surface of what ultimately becomes an impervious surface. In Applicant's view it is inappropriate to argue that one of ordinary skill would simply realign pore sizes to permit fluid passage since this is explicitly not the desired result of Lesh. A solution proposed in the claims of Applicant is completely contrary to the problem as understood by Lesh. In Lesh's view it is vital that the membrane be impervious to prevent all embolic material, regardless of size, from leaving the left atrial appendage. It is Applicant's recognition that porosity not pore size improves the stability of the implant that is at odds with the teachings of Lesh and is an independent invention.

Applicant respectfully requests reconsideration of claims 1 and 4-7 in light of these arguments made with respect to the Examiner's rejections in §102 and §103 and his comments concerning Applicant's argument presented in the briefs and previous prosecution on the case.

CONCLUSION

All of the claims remaining in this application should now be seen to be in condition for allowance. The prompt issuance of a notice to that effect is solicited.

Respectfully submitted,
ATRITECH, INC.
By their attorneys:

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/Robert C. Beck/

Robert C. Beck
Registration No. 28,184
Beck & Tysver, P.L.L.C.
2900 Thomas Ave., #100
Minneapolis, MN 55416
Telephone: (612) 915-9635
Fax: (612) 915-9637